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To:	Examiner Jon P. WEBER	From:	Leonard R. Svensson
Fax:	703-872-9306	Pages:	6 (including cover sheet)
Phone:	703-308-4015	Date:	October 24, 2003
Your Ref.:	10/019,248	Our Ref.:	1390-0126P
Re:	Reply to Restriction Requirement	CC:	

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• **Comments:**

Please find attached a transmittal and Reply to Restriction Requirement in connection with the above-identified application.

PATENT
1390-0126P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: MAISI, P. et al. Conf.: 1293
Appl. No.: 10/019,248 Group: 1651
Filed: October 19, 2001 Examiner: WEBER, J.
For: METHODS AND TEST KITS FOR EVALUATING
THE PRESENCE AND SEVERITY OF
RESPIRATORY TRACT INFLAMMATION

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REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

October 24, 2003

Sir:

In reply to the Restriction Requirement dated September 24, 2003, the following remarks are respectfully submitted in connection with the above-identified application.

REMARKS

Claims 18-51 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 18-23, 31, 33-40, 48 and 50-51, drawn to a method of assaying and/or evaluating respiratory inflammation by detecting MMPs (immunologically);

Appl. No. 10/019,248

Group II, claims 24-30 and 41-47, drawn to an immuno test strip for detecting MMPs; and

Group III, claims 32, 34, 49 and 51, drawn to a method of making an immuno test strip for detecting MMPs.

The Examiner contends that the inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical feature, defined by PCT Rule 13.2 as a contribution over the prior art. Specifically, the Examiner argues that the alleged technical feature that links the three inventive groups is an antibody or binding agent that recognizes MMPs. The Examiner contends that this special technical feature cannot be said to provide a contribution over the art as it is anticipated by and therefore lacks novelty over, for example, References D1 and D2 identified in the International Preliminary Examination Report as well as WO 94/10208 cited in the International Search Report.

The Examiner has obviously reviewed the International Preliminary Examination Report but appears to overlook the fact that the IPEA also took note of the D1 and D2 references but did not find unity of invention lacking. According to 35 USC 371, PCT Rule 13/1 and 13.2 will be followed when considering unity of invention of claims without regard to the practice in national applications (MPEP 1850). Applicants therefore request reconsideration and removal of the restriction requirement. If the Examiner maintains the requirement, Applicants hereby elect the claims of Group I, claims 18-23, 31, 33-40, 48 and 50-51 with traverse, to fully comply with the restriction requirement.

Appl. No. 10/019,248

Accordingly, Applicants respectfully request early allowance of the claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson (Reg. No. 30,330) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

Certificate of Transmittal
I hereby Certify that this correspondence is being
facsimile transmitted to the Patent and
Trademark Office.
On October 24, 2003
[Signature]
DANIEL B. PAULS
Typed or printed name of person signing certificate

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By [Signature]
Leonard R. Svensson, #30,330

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